

Historic, Archive Document

Do not assume content reflects current scientific knowledge, policies, or practices.

X
UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
WASHINGTON, D. C.

(General Regulations, Series B)

REGULATIONS GOVERNING NOTICE AND OPPORTUNITY FOR HEARING UNDER SECTION 8 OF THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED

**UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY.**

By virtue of the authority vested in the Secretary of Agriculture by the Agricultural Adjustment Act, approved May 12, 1933, as amended, I, HENRY A. WALLACE, Secretary of Agriculture, do make, prescribe, publish, and give public notice of the following regulations with the force and effect of law, to be in force and effect from the date of the approval hereof until amended or superseded by regulations hereafter made by the Secretary of Agriculture with the approval of the President under said Act.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington this 17th day of August, 1935.



H. Wallace
Secretary of Agriculture.

Approved:

F. D. Roosevelt
The President of the United States.

THE WHITE HOUSE,
Sept. 18, 1935.

ARTICLE I. DEFINITIONS

SECTION 100.¹ As used in these regulations:

- (a) The term "Act" means the Agricultural Adjustment Act, approved May 12, 1933, as amended.
- (b) The term "Secretary" means the Secretary of Agriculture of the United States.
- (c) The term "Department" means the United States Department of Agriculture.
- (d) The term "Hearing Clerk" means the Hearing Clerk, Office of the Solicitor, United States Department of Agriculture, Washington, D. C.

¹ The sections of these Regulations are numbered according to the corresponding numbers of the Articles. Thus the first section of the first Article is section 100, the first section of the second Article is section 200, etc.

(e) The term "basic agricultural commodity" means any of the commodities designated as such by section 11 of the Act including wheat, rye, flax, barley, cotton, field corn, grain sorghums, hogs, cattle, rice, potatoes, tobacco, sugar beets and sugarcane, peanuts, and milk and its products, and any regional or market classification, type or grade thereof, and any other commodity which may hereafter be designated as such by amendment to the Act.

(f) The term "program" means any plan or project involving the exercise by the Secretary of any one or more of the powers vested in him by subsections (2) and (3) of section 8 of the Act.

(g) The term "Federal Register" means the publication provided for by the Federal Register Act approved July 26, 1935; provisions in these regulations relating to the Federal Register shall not be applicable or of any effect until the commencement of said publication.

(h) The term "fair exchange value" of any basic agricultural commodity means the price therefor, to be ascertained from available statistics of the Department, that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period specified in section 2 of the Act; and in the case of all commodities for which the base period is the pre-war period, August 1909 to July 1914, will also reflect interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate as contrasted with such interest payments and tax payments during said base period.

(i) The term "marketing year" means the twelve month period during which the annual production of any basic agricultural commodity is normally marketed as fixed by the Act or ascertained and prescribed by regulations of the Secretary issued thereunder.²

ARTICLE II. HEARINGS ON PROGRAMS UNDER SECTION 8 OF THE ACT

SECTION 200. When Held.

A. Initiation of Programs.—Under section 8 of the Act whenever the Secretary has reason to believe that:

(a) The current average farm price for any basic agricultural commodity is less than the fair exchange value thereof, or the average farm price of such commodity is likely to be less than the fair exchange value thereof for the period in which the production of such commodity during the current or next succeeding marketing year is normally marketed, and

(b) The conditions of and factors relating to the production, marketing, and consumption of such commodity are such that

²The following marketing years have been ascertained and prescribed pursuant to the Act: *Cotton*: The period commencing August 1 and ending July 31 of the succeeding year (Cotton Regulations, Series 2); *Wheat*: July 9 to July 8, inclusive (Wheat Regulations, Series 1, No. 1); *Field Corn*: November 5 to November 4, inclusive (Field Corn Regulations, Series 1); *Hogs*: November 5 to November 4, inclusive (Hog Regulations, Series 1, No. 1); *Tobacco*: October 1 to September 30, inclusive (Tobacco Regulations, Series 1, No. 1); *Peanuts*: October 1 to September 30, inclusive (Peanut Regulations, Series 1, No. 1); *Sugar Beets and Sugarcane*: January 1 to December 31, inclusive (subsection (a) of section 9 of the Act); *Rice*: August 1 to July 31, inclusive (subsection (a) of section 9 of the Act; Rice Regulations, Series 1, No. 2); *Rye*: The first marketing year is the period commencing September 1, 1935 and ending June 30, 1936; subsequent marketing years commence on July 1 and end on June 30 of the succeeding year (section 9 (b) (4) of the Act; Rye Regulations, Series 1, No. 1).

the exercise of any one or more of the powers conferred upon the Secretary under subsections (2) and (3) of section 8 of the Act would tend to effectuate the declared policy of the Act, he shall cause an immediate investigation to be made to determine such facts. If upon the basis of such investigation the Secretary finds the existence of such facts he shall proclaim such determination and shall exercise such one or more of the powers conferred upon him under subsections (2) and (3) as he finds upon the basis of an investigation administratively practicable and best calculated to effectuate the declared policy of the Act. In the course of any such investigation the Secretary shall hold one or more hearings, and give due notice and opportunity for interested parties to be heard. Any such hearing may be held with respect to more than one basic agricultural commodity at the same time and place and a single notice and opportunity for hearing with reference to all such commodities shall be sufficient.

B. Additions to Programs Involving Exercise of Additional Powers.—If after a program involving the exercise of any one or more of the powers conferred upon the Secretary under subsections (2) and (3) of section 8 of the Act has been put into effect pursuant to the Act, the Secretary has reason to believe that the exercise of any additional powers under said subsections in combination with the powers already exercised in connection with such program would make the program administratively practicable and better calculated to effectuate the declared policy of the Act, an investigation shall be made to determine such facts and in the course of such investigation one or more hearings shall be held, and interested parties shall be given due notice and opportunity to be heard.

SECTION 201. Notice of Hearings.

(a) **Contents of notice.**—The notice with respect to any hearing shall include a statement of the basic agricultural commodity or commodities to be affected, the purpose of the hearing, a brief outline of any proposed program, the time and place of such hearing, and the place where a summary or outline of any proposed program may be obtained and examined.

(b) **Manner of giving notice.**—The Hearing Clerk shall give such notice in the following manner:

(1) By posting a copy of the notice on the official bulletin board of the Department at Washington, D. C.;

(2) By publication of such notice in the Federal Register when required or authorized to be published therein;

(3) By issuing press releases containing or describing such notice to such newspapers as will reasonably tend to bring notice to the producers and processors of the basic agricultural commodity or commodities to which the hearing relates, and other persons likely to be affected by the adoption of a program with respect to such commodity or commodities;

(4) By forwarding copies of such notice addressed to Governors of such of the several States of the United States and to executive heads of such of the Territories and possessions of the United States as the Secretary or such officer or employee of the Department as he may designate for this purpose, having due regard for the subject

matter of such proposed hearing and the public interest, shall determine should be notified;

(5) By mailing, telegraphing, or in any other manner transmitting oral or written information of such notice to producer associations in the agricultural area likely to be affected by the adoption of a program with respect to the basic agricultural commodity or commodities to which the hearing relates where the names and addresses of such producer associations are known to the Secretary;

(6) By mailing, telegraphing, or in any other manner transmitting oral or written information of such notice to associations of processors of the basic agricultural commodity or commodities to which the hearing relates where the names and addresses of such associations of processors are known to the Secretary; and

(7) In addition to the above means of giving notice, such other means may be used to give notice to producers, processors, associations of producers or processors, and to other agencies as are calculated to give actual notice to the persons likely to be affected by the adoption of a program with respect to the basic agricultural commodity or commodities to which the hearing relates.

(8) Proof of the giving of notice hereunder shall be made by the affidavit of the employee of the Department who gave such notice, or who has actual personal knowledge of the facts of the giving of such notice. Such affidavit shall be filed in the Office of the Hearing Clerk and the filing thereof noted on a docket. Whenever such affidavit has been filed, it shall constitute a paper or document of the Department within the meaning of Title 28, section 661, of the United States Code.

(9) Failure to give notice by any one or more of the means herein provided shall not invalidate any proclamation or program nor limit their application, provided notice otherwise sufficient in law has been given.

(c) **Time of notice.**—Such notice or notices of hearing shall be issued at least fifteen (15) days prior to the date fixed for the hearing set forth in said notice unless the Secretary shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Secretary may determine to be reasonable in the circumstances.

SECTION 202. Designation and Powers of Presiding Officer.—Every such hearing shall be conducted by a Presiding Officer, who shall be the Secretary or such officer or employee of the Department as the Secretary may designate for the purpose. Any such designation may be made or revoked by the Secretary at any time. Such hearing shall be conducted in a manner to be determined by the Presiding Officer, subject to the provisions of the Act and applicable regulations issued pursuant thereto.

SECTION 203. Continuance of Hearings.—Every such hearing shall be held at the time and place set forth in the notice of hearing, but may at such time and place be continued from day to day or adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing by the Presiding Officer.

SECTION 204. Submission of Evidence.—All persons, including the Secretary and those testifying on his behalf, shall be given an

opportunity to offer evidence in favor of or against the exercise by the Secretary of any one or more of the powers conferred upon him by subsections (2) or (3), or both, of section 8 of the Act or for or against the initiation of any proposed program which may be the subject of the hearing or the adoption of any provision thereof. All witnesses shall be sworn or make affirmation, after which they shall state their names, addresses, occupations and representation, and also such other information as the Presiding Officer may request. Where necessary in order to prevent undue prolongation of the hearing, the Presiding Officer may limit the number of times any witness may testify, or the length of time any witness may consume in giving testimony, or the length of time to be consumed in the asking of questions. The Presiding Officer shall confine the evidence to relevant matters.

SECTION 205. Order of Procedure at Hearings.

(a) The Presiding Officer shall read the notice of hearing and the designation of the Presiding Officer, and shall then outline briefly the procedural rules to be followed. The Presiding Officer shall then cause the questions to which the hearing relates to be stated without argument or comment.

(b) Evidence shall be received with respect to the matters indicated in the notice of hearing in such order as the Presiding Officer may prescribe. Additions to and modifications of any proposed program which may be the subject of the hearing may be proposed but insofar as practicable shall be in writing.

SECTION 206. Transcript of Testimony.—Testimony given at a hearing shall be reported verbatim. All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon a satisfactory showing of the authenticity, relevancy, and materiality of the contents thereof, be numbered and received in evidence and made a part of the record. Such exhibits shall, if possible under the circumstances, be submitted in quadruplicate and in typewritten, printed, or mimeographed form. In the event of the non-availability of the required number of copies, the Presiding Officer shall exercise his discretion as to whether said exhibit shall be read into the transcript of testimony or whether additional copies shall be required to be submitted within a time to be specified by the Presiding Officer. Where the testimony of a witness refers to an existing statute, report, or published document, either of a public or private nature, the Presiding Officer shall, after inquiry relating to and identification of said document, determine whether the same shall be produced at the hearing and physically become a part of the record or whether it shall be incorporated into the record of the hearing by reference. Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant, such immaterial or irrelevant parts shall be excluded, and shall be segregated insofar as practicable.

SECTION 207. Written Arguments.—The Presiding Officer shall announce at the hearing a period within which written arguments based solely on the evidence received at the hearing may be filed in the office of the Hearing Clerk.

SECTION 208. Filing of Record.—The Presiding Officer shall notify the Hearing Clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments and shall furnish the Hearing Clerk such other information as may be necessary. As soon as possible after the hearing, the Hearing Clerk shall procure an original and three copies of the transcript of the testimony and the original and all copies of exhibits not already on file in the Office of the Hearing Clerk. The Presiding Officer shall attach to the original transcript of testimony his certificate stating that the transcript is a true transcript of the testimony given at the hearing except in such particulars as he shall specify; and that the exhibits attached to the transcript are all the exhibits introduced at the hearing with such exceptions as he shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the Hearing Clerk shall note upon each copy of the transcript each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the text conform to the correct meaning.

SECTION 209. Copies of Record.—Any person desiring a copy of the transcript of the testimony or of any filed written exhibit or written argument shall be entitled to the same upon application to the Hearing Clerk and upon payment of fees therefor as provided by the regulations of the Department.

SECTION 210. Hearings upon Termination of Program.—Under subsection (4) of Section 8 of the Act whenever during a period which a program under subsections (2) or (3) of section 8 is in effect, the Secretary has reason to believe with respect to the basic agricultural commodity covered by such program, that:

(a) The current average farm price for such commodity is not less than the fair exchange value thereof, and the average farm price for such commodity is not likely to be less than the fair exchange value thereof for the period in which the production of such commodity during the current or next succeeding marketing year is normally marketed, or

(b) The conditions of and factors relating to the production, marketing, and consumption of such commodity are such that none of the powers conferred in subsections (2) and (3) of section 8 of the Act, and no combination of such powers, would, if exercised, tend to effectuate the declared policy of the Act

an immediate investigation shall be made upon order of the Secretary to determine such facts and in the course of such investigation one or more hearings shall be held and due notice and opportunity shall be given for interested parties to be heard. If, upon the basis of such investigation, the Secretary finds the existence of such facts, he shall proclaim such determination, and shall not exercise any of such powers with respect to such commodity after the end of the marketing year current at the time when such proclamation is made and prior to a new proclamation under subsection (1) of section 8 of the Act, except insofar as the exercise of such power is necessary to carry out obligations of the Secretary assumed, prior to the date of such proclamation made pursuant to this subsection, in connection with the

exercise of any of the powers conferred upon him under subsections (2) or (3) of said section 8.

The provisions of this article shall govern, insofar as they are appropriate, the giving of notice and conduct of hearings relating to the termination of programs.

ARTICLE III. ADOPTION AND TERMINATION OF PROGRAMS UNDER SECTION 8 OF THE ACT

SECTION 300. Proclamation of Determination Pursuant to subsection (1) of section 8 of the Act.—As soon as practicable after the close of the hearings held in connection with an investigation to determine the existence of the facts referred to in paragraphs (a) and (b) of subsection (1) of section 8 of the Act, with respect to any basic agricultural commodity, if such facts, on the basis of such investigation, are found by the Secretary to exist, he shall proclaim such determination. Publication of such proclamation shall be given by (1) posting a copy of such proclamation on the official bulletin board of the Department in Washington, D. C.; (2) by publishing a copy of such proclamation in the Federal Register when required or authorized to be published therein; (3) by issuing press releases containing or describing such proclamation. Such proclamation shall remain in effect until a proclamation is made pursuant to subsection (4) of section 8 of the Act.

SECTION 301. Notice of Adoption of Programs Under subsections (2) and (3) of section 8 of the Act.—As soon as practicable after the close of the hearings held in the course of an investigation made pursuant to subsection (1) of section 8 of the Act, if on the basis of the investigation in the course of which such hearing was held the Secretary finds that a program is administratively practicable and is best calculated to effectuate the declared policy of the Act public notice of the adoption of such program shall be given by publication in the same manner as is provided for public notice of proclamations in section 300 of these Regulations of the Secretary's findings with respect to such program.

SECTION 302. Proclamation of Determination Pursuant to subsection (4) of section 8 of the Act.—As soon as practicable after the close of the hearings held in connection with an investigation to determine the existence of the facts referred to in subsection (4) of section 8 of the Act, with respect to any basic agricultural commodity, if such facts, on the basis of such investigation are found by the Secretary to exist, he shall proclaim such determination. Public notice of such proclamation shall be given in the same manner as is provided in section 300 of these Regulations for public notice of proclamation of the Secretary's determination pursuant to subsection (1) of section 8 of the Act.

SECTION 303. Filing of Proclamations and Findings.—A certified copy of any proclamation or findings made pursuant to section 8 of the Act shall be filed as a public record in the office of the Hearing Clerk. Any person shall be entitled to a copy of any such proclamation or findings upon application to the Hearing Clerk.

SECTION 304. Failure to Give Notice.—Failure to give notice by any one or more of the means provided for in this Article shall not

invalidate any proclamation or program or limit their application provided notice otherwise sufficient in law has been given.

ARTICLE IV. CONSTRUCTION

SECTION 400. Nothing contained in these Regulations shall be, or shall be construed to be, in derogation or modification of the rights of the Secretary or of the United States to exercise any jurisdiction or powers granted by the Act, or otherwise, or to invalidate any program initiated prior to the effective date of these Regulations or any action taken or to be taken by the Secretary in connection with such program.

ARTICLE V. PUBLIC NOTICE OF FOREGOING REGULATIONS—HOW GIVEN

SECTION 500. Public notice of the issuance of the foregoing Regulations shall be given by, (a) posting a copy of such regulations on the official bulletin board of the Department at Washington, D. C.; (b) issuing a press release containing a description of such regulations and making available in the office of the Hearing Clerk copies of such regulations for the press; and (c) forwarding by mail copies of such regulations to the Governors of the several States of the United States and to the executive heads of the Territories of the United States.